

(2019) 05 RAJ CK 0225

In the Rajasthan High Court

Case No : Criminal Misc Suspension Of Sentence Application (Appeal) No. 624 Of 2019

Mamta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389
Indian Penal Code, 1860 — Section 120B, 376, 384

Citation : (2019) 05 RAJ CK 0225

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : K.R. Bhati, R.R. Chapparwal

Final Decision : Disposed Off

Judgement

Applicant has preferred this third application for suspension of sentence under Section 389 Cr.P.C.

The first application was rejected on 27.02.2018 followed by second on 06.09.2018.

Arguing on this third application, it is submitted by learned counsel that learned trial Court has sentenced the applicant for offence punishable under Section 376 read with Sections 120B & 384 IPC with seven years' imprisonment and out of seven years, she has already served the sentence for more than three years. It is also argued by learned counsel that though learned trial Court has found some evidence to implicate the applicant for conspiracy but no material or any objectionable article, including obscene photographs of the prosecutrix, was recovered from her possession. Learned counsel has further submitted that the offence of rape, as such, was committed by co-accused and even the learned trial Court has not examined the plea of alibi of the applicant in right perspective. Lastly, learned counsel has urged that considering prolonged custody of the applicant, which is of more than three years and her status as woman, she may

be granted reprieve in the matter of suspension of sentence.

Per contra, learned Public Prosecutor has opposed the application for suspension of sentence.

I have bestowed my consideration to the arguments.

While it is true, that the allegations against applicant are serious and the learned trial Court has indicted her for said offence but then the question sought to be raised by applicant also requires consideration even at this stage. It is also noteworthy that the applicant has already served the sentence for more than three years and final hearing of the appeal in near future appears to be not possible, therefore, while refraining to make any comment on merits but taking a benevolent view, by relying on her status as a woman, the application for suspension of sentence is allowed.

Accordingly, the application for suspension of sentence filed under Section 389 Cr.P.C. is allowed and it is ordered that the sentence passed by Additional District and Session Judge, Balotra, vide judgment dated 27.09.2017, in Sessions Case No.31/2016 against applicant-appellant Smt. Mamta W/o Shri Kishan, shall remain suspended till final disposal of the aforesaid appeal provided she furnishes a personal bond in the sum of Rs.50,000/-with two sureties of like amount to the satisfaction of learned trial Judge for appearance in this Court on 01.07.2019 and whenever ordered to do so till disposal of the appeal, on the conditions indicated below:-

1. That she will appear before the trial Court in the month of January every year till the appeal is decided.
2. That if the applicant changes the place of residence, she will give in writing her changed addresses to the trial Court as well as to the counsel in the High Court.
3. Similarly, if the sureties change their address(s), they will give in writing their changed address to the trial Court.

The learned trial Court shall keep the record of attendance of accused-applicant in a separate file. Such file be registered as Criminal Misc. Case related to original case in which the accused-applicant was tried and convicted. A copy of this order shall also be placed in that file for ready reference. Criminal Misc. file shall not be taken into account for statistical purposes relating to pendency and disposal of cases in the trial Court. In case the said accused-applicant does not appear before the trial Court, the learned trial Judge shall report the matter to the High Court for cancellation of bail.